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12 LIVEOPS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

24 Disclosure and discovery activity in this action are likely to involve production of
25 confidential, proprietary, or private information for which special protection from public
26 disclosure and protection from use for any purpose other than prosecuting this litigation would
27 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
28 following Stipulated Protective Order. The parties acknowledge that this Order does not confer

1 blanket protections on all disclosures or responses to discovery, and that the protection it affords
2 extends only to the limited information or items entitled under applicable legal principles to be
3 treated as confidential. The parties further acknowledge that this Stipulated Protective Order
4 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth
5 the applicable procedures and standards when a party seeks leave to file material under seal.

6 Therefore, pursuant to the authority of Federal Rule of Civil Procedure 26(c), and the
7 stipulation of the parties, through their respective counsel, the following Protective Order shall
8 issue:

9 A. Designated Material.

10 1. Information, materials and/or discovery responses may be designated pursuant to
11 this Protective Order by the person or entity producing or lodging it or by any party to this action
12 (the “Designating Party”) if: (a) produced or served, formally or informally, pursuant to the
13 Federal Rules of Civil Procedure and Local Rules of the Northern District of California or in
14 response to any other formal or informal discovery request in this action; and/or (b) filed or
15 lodged with the Court. All such information and material and all information or material derived
16 therefrom constitutes “Designated Material” (which includes materials designated
17 “CONFIDENTIAL” and “ATTORNEYS AND CONSULTANTS ONLY”) under this Protective
18 Order. Unless and until otherwise ordered by the Court or agreed to in writing by the parties, all
19 Designated Materials shall be used only for purposes of this litigation, and shall not be used or
20 disclosed by the party receiving the Designated Material except as provided under the terms of
21 this Protective Order. (For purposes of this Protective Order, “disclose” means to show, furnish,
22 or provide the original or a copy of the referenced material or document.)

23 Subject to the limitations set forth in this Protective Order, a designation of
24 “CONFIDENTIAL” means information other than “ATTORNEYS AND CONSULTANTS
25 ONLY,” whether embodied in any physical medium and regardless of how generated, stored or
26 maintained, or tangible things that qualify for protection under standards developed under
27 F.R.Civ.P. 26(c), including without limitation other trade secrets or other confidential research,
28 development, or commercial information. Information may also be designated

1 "CONFIDENTIAL" if the designating party believes in good faith that the information falls
2 within any right to privacy guaranteed by the laws of the United States or California.
3 Subject to the limitations set forth in this Protective Order, a designation of "ATTORNEYS
4 AND CONSULTANTS ONLY" means information, whether or not embodied in any physical
5 medium, and including specifically without limitation any information disclosed or determined
6 by the Designating Party to constitute a Trade Secret, whose disclosure to another Party or non-
7 party would, in the Designating Party's good faith judgment, create a substantial risk of serious
8 injury that could not be avoided by less restrictive means. Information may also be designated
9 "ATTORNEYS AND CONSULTANTS ONLY" if the Designating Party believes in good faith
10 that the information is significantly sensitive and protected by any right to privacy guaranteed by
11 the laws of the United States or California such that disclosure to another Party or non-party
12 would create a significant risk of material injury.

13 **B. Access To Designated Material.**

14 1. Materials Designated CONFIDENTIAL. Materials designated

15 "CONFIDENTIAL" may only be disclosed to:

16 (a) Persons not a party to this action who appear on the face of Designated
17 Materials marked CONFIDENTIAL as an author, addressee or recipient thereof so long as the
18 documents remain in the possession, custody or control of Outside Counsel and/or the party who
19 produced and designated the Materials;

20 (b) "Outside Counsel" (which means and is defined as counsel of record,
21 including the partners, associates, agents and employees of counsel of record, except for agents
22 or employees who have been retained or employed by Outside Counsel as experts or consultants
23 to assist in the preparation of the case) for the parties to this action to the extent reasonably
24 necessary to render professional services in this action. This provision shall be without prejudice
25 to Brown's right to move the Court to modify this provision should, in Brown's judgment, its
26 operation in practice materially impede his ability to communicate with counsel in this or other
27 cases or his trial preparation; as well as without prejudice to LiveOps' right to oppose such
28 motion or to assert that such criteria are not determinative.

(c) Non-party experts and consultants retained or employed by Outside Counsel to assist in the preparation of the case (“Outside Consultants”), to the extent reasonably necessary to render professional services in this action, subject to the disclosure requirements of Section C;

(d) Three (3) non-party officers and/or employees of Teleo, Inc. or Microsoft Corporation (collectively “Teleo”), whose identities (including full names, titles, professional addresses, affiliations and all other present employment and/or consultancies) shall first be fully designated in writing to be served via facsimile on Outside Counsel for LiveOps, Inc. (“LiveOps”) at least five (5) business days prior to disclosure of Designated Materials marked CONFIDENTIAL to the designated officers and/or employees (“Teleo Designees”);

(i) In the event that a Teleo Designee ceases to be an officer and/or employee of Teleo or Microsoft Corporation (“Microsoft”), Teleo shall so notify Outside Counsel for LiveOps in writing, identifying the Teleo Designee’s new employer and professional addresses and/or affiliations and all other present employment and/or consultancies, and shall either: (A) certify that the departing Designee has not retained any CONFIDENTIAL materials, and, at Teleo’s option, designate a replacement Teleo Designee consistent with the provisions of this section; or (B) notify Outside Counsel for LiveOps in writing of its intention to continue to use the Designee as a consultant, in which case LiveOps may object to the continued use of the departed Designee under the provisions of Section C.

(ii) In the event that LiveOps objects to disclosure of CONFIDENTIAL material to a Teleo Designee, LiveOps shall send its objection in writing to Teleo's Outside Counsel within five (5) business days following Teleo's designation. The parties shall meet and confer to resolve any objections informally. In the event that objections are made but not resolved informally, LiveOps may move, within fifteen (15) business days following its notice of objection, for a protective order preventing disclosure of CONFIDENTIAL materials to the Teleo Designee. In the event LiveOps brings such a motion, it shall bear the burden of proving that the disclosure of CONFIDENTIAL materials to the Teleo Designee would cause LiveOps unwarranted annoyance, embarrassment or oppression. Prior to

1 the resolution of any such objection, an opposing party's Designated Materials shall not be
2 disclosed to person(s) so designated.

3 (e) Three (3) officers and/or employees of LiveOps, whose identities
4 (including full names, titles, professional addresses, affiliations and all other present employment
5 and/or consultancies) shall first be fully designated in writing to be served via facsimile on
6 Outside Counsel for Teleo at least five (5) business days prior to disclosure of Designated
7 Materials marked CONFIDENTIAL to the designated officers and/or employees ("LiveOps
8 Designees");

9 (i) In the event that a LiveOps Designee ceases to be an officer and/or
10 employee of LiveOps, it shall so notify Outside Counsel for Teleo in writing, identifying the
11 LiveOps' Designee's new employer and professional addresses and/or affiliations and all other
12 present employment and/or consultancies, and shall either: (A) certify that the departing
13 Designee has not retained any CONFIDENTIAL materials, and at its option designate a
14 replacement LiveOps Designee consistent with the provisions of this section; or (B) notify
15 Outside Counsel for Teleo in writing of its intention to continue using the designee as a
16 consultant, in which case Teleo may object to the continued use of the departed designee under
17 the provisions of Section C.

18 (ii) In the event that Teleo objects to disclosure of CONFIDENTIAL
19 material to a LiveOps Designee, Teleo shall send its objection in writing to Outside Counsel for
20 LiveOps within five (5) business days following LiveOps' designation. The parties shall meet
21 and confer to resolve any objections informally. In the event that objections are made but not
22 resolved informally, Teleo may move, within fifteen (15) business days following its notice of
23 objection, for a protective order preventing disclosure of CONFIDENTIAL materials to the
24 LiveOps Designee. In the event Teleo brings such a motion, it shall bear the burden of proving
25 that the disclosure of CONFIDENTIAL materials to the LiveOps Designee would cause Teleo
26 unwarranted annoyance, embarrassment or oppression. Prior to the resolution of any such
27 objection, an opposing party's Designated Materials shall not be disclosed to person(s) so
28 designated.

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1 (f) Wendell Brown (“Brown”), so long as the documents remain in the
2 possession, custody or control of Outside Counsel and/or the party who produced and designated
3 the Materials when reviewing such materials. This provision shall be without prejudice to
4 Brown’s right to move the Court to modify this provision should, in Brown’s judgment, its
5 operation in practice proves unduly burdensome; as well as without prejudice to LiveOps’ right
6 to oppose such motion or to assert that such criterion is not determinative.

7 (i) In the event that Wendell Brown ceases to be a party to the action,
8 he shall: (A) certify that he has not retained any CONFIDENTIAL materials; or (B) notify
9 Outside Counsel for LiveOps in writing of his intention to continue as a consultant to Teleo, in
10 which case LiveOps may object to Brown having continued access to CONFIDENTIAL
11 materials under the provisions of Section C.

12 (ii) In the event that LiveOps objects to disclosure of
13 CONFIDENTIAL material to Brown, LiveOps shall send its objection in writing to Outside
14 Counsel for Brown within five (5) business days following LiveOps’ designation. The parties
15 shall meet and confer to resolve any objections informally. In the event that objections are made
16 but not resolved informally, LiveOps may move, within fifteen (15) business days following its
17 notice of objection, for a protective order preventing disclosure of CONFIDENTIAL materials to
18 Brown. In the event LiveOps brings such a motion, it shall bear the burden of proving that the
19 disclosure of CONFIDENTIAL materials to Brown would cause LiveOps unwarranted
20 annoyance, embarrassment or oppression. Prior to the resolution of any such objection, an
21 opposing party’s Designated Materials shall not be disclosed to person(s) so designated.

22 (g) Subject to Section F(3) and H below, Designated Material marked
23 CONFIDENTIAL may also be shown to witnesses at deposition and/or at trial, but shall not be
24 retained by such persons.

25 2. Materials Designated ATTORNEYS AND CONSULTANTS ONLY. Materials
26 marked “ATTORNEYS AND CONSULTANTS ONLY” can only be reviewed by or disclosed
27 to:

28 (a) Persons who appear on the face of Designated Materials marked

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1 ATTORNEYS AND CONSULTANTS ONLY as an author, addressee, or recipient thereof, so
2 long as the documents remain in the possession, custody or control of Outside Counsel and/or the
3 party who produced and designated the Materials when reviewing such materials;

4 (b) Outside Counsel for the parties to this action, as defined above; this
5 provision shall be without prejudice to Brown's right to move the Court to modify this provision
6 should, in Brown's judgment, its operation in practice materially impede his ability to
7 communicate with counsel in this or other cases or his trial preparation; as well as without
8 prejudice to LiveOps' right to oppose such motion or to assert that such criteria are not
9 determinative;

10 (c) Outside Consultants, to the extent reasonably necessary to render
11 professional services in this action, subject to the disclosure requirements of Section C;

12 (d) One (1) in-house counsel each for Teleo and for LiveOps, provided that (i)
13 such in-house counsel is not engaged or involved in competitive decision-making; developing,
14 planning, marketing, or selling products or services; determining the costs or prices thereof; or
15 patent prosecution involving technology related to Voice Over Internet Protocol applications and
16 services; (ii) the identity of such in-house counsel (including full name, title, professional
17 address, affiliations and all other present employment and/or consultancies) is designated in
18 writing to be served via facsimile on Outside Counsel for the Designating Party at least five (5)
19 business days prior to disclosure of Designated Materials marked ATTORNEYS AND
20 CONSULTANTS ONLY to the designated in-house counsel; and (iii) such counsel shall not
21 retain such materials or copies thereof. For purposes of this paragraph, "in-house counsel" shall
22 include one (1) administrative assistant assisting such counsel. Before any Designated Material
23 is shown to an administrative assistant, however, the administrative assistant must first be
24 provided a copy of this Protective Order and execute the form attached hereto as Exhibit A.

25 (i) In the event that a party's designated in-house counsel ceases to be
26 employed by the party, it shall so notify Outside Counsel for the other parties in writing,
27 identifying the departing in-house counsel's new employer and professional addresses and/or
28 affiliations and all other present employment and/or consultancies, and shall certify that the

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1 departing in-house counsel has not retained any Designated Materials, and at its option designate
2 a replacement designated in-house counsel consistent with the provisions of this section.

3 (ii) In the event that a party objects to the disclosure of Designated
4 Material to another party's designated in-house counsel, the objecting party shall send its
5 objection in writing to Outside Counsel for the designating party within five (5) business days
6 following designation. The parties shall meet and confer to resolve any objections informally.
7 In the event that objections are made but not resolved informally, the objecting party may move,
8 within fifteen (15) business days following its notice of objection, for a protective order
9 preventing disclosure of Designated Material to the designated in-house counsel. In the event
10 the objecting party brings such a motion, it shall bear the burden of proving that the disclosure of
11 Designated Materials would cause unwarranted annoyance, embarrassment or oppression. Prior
12 to the resolution of any such objection, an objecting party's Designated Materials shall not be
13 disclosed to person so designated.

14 (e) Subject to Section F(3) and H below, Designated Material marked
15 "ATTORNEYS AND CONSULTANTS ONLY" may also be shown to witnesses at deposition
16 and/or at trial, but shall not be retained by such persons.

17 3. Each person to whom any Designated Material may be disclosed pursuant to the
18 provisions in this Protective Order shall, prior to the time such Designated Material is disclosed
19 to him or her, be provided with a copy of this Protective Order and shall certify under penalty of
20 perjury that he or she has carefully read the Protective Order and fully understands its terms and
21 agrees to be bound thereby. This certificate shall be in the form attached as Exhibit A hereto.
22 Outside Counsel who makes any disclosure of Designated Materials shall retain each original
23 executed certificate and, upon written request, shall circulate copies to all Outside Counsel at the
24 termination of this action.

25 **C. Access By Outside Consultants.**

26 1. If any party wishes to disclose information or materials designated under this
27 Protective Order as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY to any
28 Outside Consultant, it must first identify that individual to Outside Counsel for the Designating

1 Party, who shall have five (5) business days from receipt of such notice to object in writing to
2 such disclosure to any individual. Such identification shall at least include the full name and
3 professional address and/or affiliation of the individual, his or her prior employment,
4 consultancies or testimony for the previous five years, and all of the person's other present
5 employment or consultancies in the field. The parties shall attempt to resolve any objections
6 informally. If the objections cannot be resolved, the objecting party may move, within fifteen
7 (15) business days following its objection, for a protective order preventing disclosure of
8 CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY materials to the individual.
9 In the event that such a motion is made, the party seeking to prohibit disclosure shall bear the
10 burden of proving and the Court must determine whether consent to the consultancy has been
11 unreasonably withheld. Prior to the resolution of any such objection, an opposing party's
12 Designated Materials shall not be disclosed to person(s) so designated. The parties shall not
13 have any obligation under this Protective Order to identify which materials are provided to
14 Outside Consultants. In the event a motion is not made by the objecting party, said objection is
15 deemed waived and the designated expert may have complete access to designated materials.

16 2. Each Outside Consultant to whom any Designated Material may be disclosed
17 pursuant to the provisions in this Protective Order shall, prior to the time such Designated
18 Material is disclosed to him or her, be provided with a copy of this Protective Order and shall
19 certify under penalty of perjury that he or she has carefully read the Protective Order and fully
20 understands its terms and agrees to be bound thereby. This certificate shall be in the form
21 attached as Exhibit A hereto. Outside Counsel who makes any disclosure of Designated
22 Materials shall retain each original executed certificate and, upon written request, shall circulate
23 copies to all Outside Counsel at the termination of this action.

24 3. In addition to the foregoing, each Outside Consultant to whom any Designated
25 Material will be disclosed shall, prior to disclosure of such material, execute the Certification of
26 Consultant in the form attached as Exhibit B hereto. Upon receipt of this Certification of
27 Consultant by counsel for the party retaining the Consultant, disclosure of such Designated
28 Material may be made to the Outside Consultant without notification to the Designating Party or

1 any other party to this action. Outside Counsel who makes any disclosure of Designated
2 Materials shall retain each original executed Certification of Consultant and, upon written
3 request, shall circulate copies to all Outside Counsel at the termination of this action.

4 **D. Use Of Designated Materials By Designating Party.**

5 Nothing in this Protective Order shall limit any Designating Party's use of its own
6 documents and information, nor shall it prevent the Designating Party from disclosing its own
7 confidential information or documents to any person. Such disclosure shall not affect any
8 designations made pursuant to the terms of this Protective Order, so long as the disclosure of
9 confidential information or documents is made in a manner that is reasonably calculated to
10 maintain the confidentiality of the information.

11 **E. Procedure For Designating Materials.**

12 Documents, non-documentary materials and discovery responses, in whole or in part,
13 may be designated as CONFIDENTIAL or as ATTORNEYS AND CONSULTANTS ONLY as
14 follows:

15 1. For information in documentary form, the producing or responding party shall
16 designate materials by placing the legend CONFIDENTIAL or ATTORNEYS AND
17 CONSULTANTS ONLY on each page of the materials prior to production. For information in
18 non-documentary form and for any other tangible items, the producing or responding party shall
19 designate the materials by placing the legend CONFIDENTIAL or ATTORNEYS AND
20 CONSULTANTS ONLY on the exterior of the media, case, container or containers in which the
21 information or items is produced prior to production.

22 2. When a party wishes to designate as CONFIDENTIAL or ATTORNEYS AND
23 CONSULTANTS ONLY materials produced by someone other than the Designating Party
24 ("Producing Party"), such designation shall be made:

25 (a) Within twenty (20) days from the date that the Designating Party receives
26 copies of the materials from the producing or disclosing entity; and
27 (b) By written notice to all parties to this action and to the Producing Party, if
28 such party is not a party to this action, identifying the materials to be designated with

1 particularity (either by production numbers or by providing other adequate identification of the
2 specific material).

3 3. Upon notice of designation, all persons receiving notice of the requested
4 designation of materials shall:

5 (a) Make no further disclosure of such Designated Material or information
6 contained therein, except as allowed in this Protective Order;

7 (b) Take reasonable steps to notify any persons known to have possession of
8 or access to such Designated Materials of the effect of such designation under this Protective
9 Order; and

10 (c) Take reasonable steps to reclaim or prevent access to such Designated
11 Material or information in the possession or control of any person not permitted to have access
12 under the terms of this Protective Order.

13 **F. Procedure For Designating Depositions.**

14 1. Deposition transcripts or portions thereof may be designated as CONFIDENTIAL
15 or ATTORNEYS AND CONSULTANTS ONLY by a party during deposition testimony taken
16 in this action, in which case the portion of the transcript containing Designated Material shall be
17 identified in the transcript by the Court Reporter as CONFIDENTIAL or ATTORNEYS AND
18 CONSULTANTS ONLY. The designated testimony shall be bound in a separate volume and
19 each page marked as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY by the
20 reporter accordingly.

21 2. Where testimony is designated at a deposition, the Designating Party shall have
22 the right to exclude, at those portions of the deposition, all persons not authorized by the terms of
23 this Protective Order to receive such Designated Material.

24 3. Notwithstanding the provisions set forth in Sections B and C of this Protective
25 Order above, any party may mark Designated Material as a deposition exhibit and examine any
26 witness thereon, provided that the exhibit and related transcript pages receive the same
27 confidentiality designation as the original Designated Material. Any person who is shown a
28 deposition exhibit comprised of Designated Material, but who is not otherwise entitled to access

1 such material under Sections B and C above, shall not be allowed (except by express permission
2 of the Designating Party) to keep a copy of the deposition exhibit, and shall not be furnished a
3 copy of such deposition exhibit when given the opportunity to review the deposition transcript
4 for accuracy following the deposition. Before any Designated Material is shown to a deponent,
5 however, the deponent must first be provided a copy of this Protective Order and execute the
6 form attached hereto as Exhibit A.

7 4. Any party may, within fifteen (15) days after receiving a deposition transcript,
8 designate pages of the transcript and/or its exhibits as Designated Material. If any party so
9 designates such material, the parties or deponents shall provide written notice of such
10 designation to all parties within the 15-day period. Designated Material within the deposition
11 transcript or the exhibits thereto may be identified in writing or by underlining the relevant
12 portions and marking such portions CONFIDENTIAL or ATTORNEYS AND CONSULTANTS
13 ONLY. Until the expiration of the 15-day period, any portion of the deposition not previously
14 designated shall be treated as CONFIDENTIAL and subject to protection as provided by this
15 Protective Order. After the expiration of the 15-day period, if no party or deponent has timely
16 designated any additional material, then such undesignated transcript and/or exhibits may be
17 disclosed without restriction.

18 5. If timely corrected, an inadvertent failure to designate qualified information or
19 items as CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY does not, standing
20 alone, waive the Designating Party's right to secure protection under this Order for such
21 material. If material is appropriately designated as CONFIDENTIAL or ATTORNEYS AND
22 CONSULTANTS ONLY after the material was initially produced, the receiving Party, on timely
23 notification of the designation, must make reasonable efforts to assure that the material is treated
24 in accordance with the provisions of this Order.

25 **G. Copies.**

26 All complete or partial copies of Designated Materials shall also be deemed subject to the
27 terms of this Protective Order.

28

1 **H. Court Procedures.**

2 1. Disclosure of Designated Material to Court Officials. Subject to the provisions of
3 this section, Designated Material may be disclosed to the Court, Court officials or employees
4 involved in this action (including court reporters, persons operating video recording equipment at
5 depositions, and any special master or referee appointed by the Court), the jury in this action, and
6 any interpreters interpreting on behalf of any party or deponent.

7 2. Obligations of the Court. The parties agree that the employees of the Court or the
8 Clerk's office have no duty to the parties to maintain the confidentiality of any information in
9 any papers filed with the Court.

10 3. Filing Designated Materials with the Court.

11 If any of the Designated Materials is submitted to the Court, such papers shall be filed
12 under seal and in compliance with the provisions set forth in Civil Local Rule 79-5. The party
13 submitting such documents shall place them in a sealed envelope on which shall be endorsed the
14 title of this litigation, an indication of the nature of the contents of the sealed envelope, the
15 notation, "CONFIDENTIAL – Protected by Court Order," and a statement substantially in the
16 following form:

17 **THIS ENVELOPE CONTAINS CONFIDENTIAL INFORMATION AND
18 IS SEALED PURSUANT TO A PROTECTIVE ORDER ISSUED BY THE
19 COURT. IT IS NOT TO BE OPENED OR THE CONTENTS THEREOF
20 TO BE DISPLAYED OR REVEALED TO ANY PERSONS EXCEPT BY
21 ORDER OF THE COURT PURSUANT TO CONSENT OF THE PARTIES
22 CLAIMING CONFIDENTIALITY.**

23 The submission shall indicate clearly which portions are Designated Materials. The
24 notation, in bold, "**DOCUMENT FILED UNDER SEAL**" shall also be made on the document
25 itself, as well as on the cover sheet. The Clerk of the Court is directed to maintain under seal all
26 documents and transcripts of deposition testimony and answers to interrogatories, admissions,
and other pleadings filed under seal with the Court in this litigation that have been designated, in
whole or in part, as Designated Material by a party to this action.

27 4. Failure to File Under Seal. If any party fails to file Designated Materials under
28 seal, the Designating Party or any party to this action may request that the Court place the

1 Designated Materials under seal within twenty (20) days of the filing of said Designated
2 Materials. The Clerk of the Court is directed to comply with such request if made.

3 5. Use of Designated Materials In Open Court. Presentation of, or quotations from,
4 Designated Materials shall be heard by the Court under such conditions and safeguards as the
5 Court may impose to prevent improper disclosure of Designated Materials. After the mandatory
6 settlement conference and prior to trial the parties shall meet and confer concerning appropriate
7 methods for dealing with Designated Material at trial.

8 **I. Objections.**

9 1. A party may challenge the propriety of any designation under this Protective
10 Order at any time. A challenge may be made by serving on all other parties a captioned notice of
11 objection, which shall identify with particularity the Designated Materials as to which the
12 designation is challenged and stating a basis for each challenge ("Notice of Objection"). Service
13 of a Notice of Objection shall be made by facsimile and by mail.

14 2. On, but not before, the twentieth (20th) day after service of a Notice of Objection,
15 the challenged material shall be deemed de-designated unless the Designating Party has served
16 by fax or hand delivery a response to the Notice of Objection setting forth the legal and factual
17 grounds upon which the Designating Party bases its position that the materials should maintain
18 the original designation or for designating the material otherwise.

19 3. The parties shall promptly meet and confer in good faith prior to the filing of any
20 motion under this section. In conferring, the challenging Party must explain the basis for its
21 belief that the confidentiality designation was not proper and must give the Designating Party an
22 opportunity to review the designated material, to reconsider the circumstances, and, if no change
23 in designation is offered, to explain the basis for the chosen designation. A challenging Party
24 may proceed to the next stage of the challenge process only if it has engaged in this meet and
25 confer process first.

26 4. If no agreement is reached, the objecting party may file a motion as provided in
27 Civil Local Rule 7 and the Court's order dated January 20, 2006 (Docket No. 61) (and in
28 compliance with Civil Local Rule 79-5, if applicable) seeking to de-designate the challenged

1 material. Each such motion must be accompanied by a competent declaration that affirms that
2 the movant has complied with the meet and confer requirements imposed in the preceding
3 paragraph and that sets forth with specificity the justification for the confidentiality designation
4 that was given by the Designating Party in the meet and confer dialogue. Until the Court rules
5 on the challenge, all parties shall continue to afford the material in question the level of
6 protection to which it is entitled under the Designating Party's designation.

7 5. In the event of a motion to change the designation, the material at issue may be
8 submitted to the Court for in camera inspection. It shall be the burden of the designating party
9 under such circumstances to establish that the information so designated is properly designated
10 CONFIDENTIAL or ATTORNEYS AND CONSULTANTS ONLY within the meaning of this
11 Protective Order. Upon the timely filing of such a motion, the original designations shall remain
12 effective until ten (10) days after service of notice of entry of an order re-designating the
13 materials and during the pendency of any writ petition filed within the ten-day period.

14 **J. Client Communication.**

15 Nothing in this Protective Order shall prevent or otherwise restrict counsel from
16 rendering advice to their clients and, in the course of rendering such advice, relying upon the
17 examination of Designated Material. In rendering such advice and otherwise communicating
18 with the client, however, counsel shall not make specific disclosure of any Designated Materials,
19 except as permitted by this Protective Order.

20 **K. No Prejudice.**

21 1. This Protective Order shall not diminish any existing obligation or right with
22 respect to Designated Materials, nor shall it prevent a disclosure to which the Designating Party
23 consents in writing before the disclosure takes place.

24 2. Unless all parties stipulate otherwise, evidence of the existence or nonexistence of
25 a designation under this Protective Order shall not be admissible for any purpose during any
26 proceeding on the merits of this action.

27 3. If any person required to produce documents inadvertently produces any
28 Designated Material without marking it with the appropriate legend, the producing party may

1 give written notice to the receiving party or parties, including appropriately stamped copies of
2 the Designated Material, that the document, thing, or response is deemed Designated Material
3 and should be treated as such in accordance with the provisions of this Protective Order.

4 4. The restrictions as to use or dissemination of information or materials, set forth in
5 any of the preceding paragraphs, shall not apply as to:

6 (a) any information which at the time of the designation under this Protective
7 Order is available to the public;

8 (b) any information which after designation under this Protective Order
9 becomes available to the public through no act, or failure to act, attributable to the receiving
10 party or its counsel; and

11 (c) any information which the receiving party, its counsel, or any recipient of
12 Designated Material under this Protective Order can show as a matter of written record was
13 already known to the receiving party through means other than by any violation of law.

14 No exception shall be taken under this Section without first complying with the
15 procedures set forth in Section I, stating as the grounds for objection one or more of the
16 exceptions set forth in this Section.

17 L. **Modification and Survival.**

18 1. **Modification; Addition of Parties to This Protective Order.**

19 (a) All parties reserve the right to seek modification of this Protective Order at
20 any time for good cause. The parties agree to meet and confer prior to seeking to modify this
21 Protective Order for any reason. The restrictions imposed by this Protective Order may only be
22 modified or terminated by written stipulation of all parties or by order of this Court.

23 (b) Parties to this action who are not listed herein or who become parties to
24 this action after the latest date of execution may become parties to this Protective Order, and
25 thereby be bound by all the terms and conditions stated herein, by executing a written agreement
26 thereto, to be signed by all Outside Counsel for the parties, and which designates Outside
27 Counsel, for the additional party.

28

1 2. Survival and Return of Designated Material. This Protective Order shall survive
2 termination of this action. Upon final termination of the action, including appeals and retrials, all
3 Designated Material, including deposition testimony regarding designated exhibits and all copies
4 thereof, shall be destroyed within sixty (60) days of the termination of the action. Outside
5 Counsel shall also be responsible for retrieving and destroying all Designated Material from
6 Outside Consultants within (60) days of the termination of the action. Outside Counsel shall
7 certify their compliance with this provision and shall deliver such certification to Outside
8 Counsel for the Designating Party not more than ninety (90) days after the termination of the
9 action.

10 Notwithstanding the provisions for return or destruction of Designated Material, Outside
11 Counsel may retain pleadings, attorney and consultant work product, deposition transcripts and
12 exhibits containing Designated Material, as well as one copy of each item of Designated Material
13 for archival purposes.

14 **M. No Contract.**

15 This Protective Order is for the Court's consideration and approval as an order. It shall
16 not be construed to create a contract between the parties or between the parties and their
17 respective counsel.

18 **N. Court's Retention of Jurisdiction.**

19 The Court retains jurisdiction to make such amendments, modifications, and additions to
20 this Protective Order as it may from time to time deem appropriate.

21
22 Dated: January 26, 2006

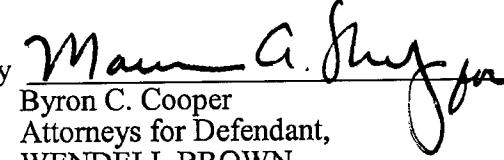
GORDON & REES LLP



23
24 By _____
25 Kevin W. Alexander
26 Richard P. Sybert
27 Attorneys for Plaintiff,
28 LIVEOPS, INC.

1 Dated: January 25, 2006

2
3 TOWNSEND AND TOWNSEND AND
4 CREW LLP

5 By 
6 Byron C. Cooper
7 Attorneys for Defendant,
8 WENDELL BROWN

9 Dated: January 26, 2006

10 MUNGER TOLLES & OLSON LLP

11 By 
12 Mark B. Helm
13 Hojoon Hwang
14 Attorneys for Defendant,
15 TELEO, INC.

16 Pursuant to the Stipulation above, and good cause appearing therefor, IT IS SO

17 ORDERED.

18 Dated: January 27, 2006



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1 EXHIBIT A

2 CERTIFICATION CONCERNING MATERIAL COVERED
3 BY PROTECTIVE ORDER

4 I, the undersigned, hereby certify that I have read the Protective Order entered in the
5 Northern District of California in the case entitled *LiveOps v. Teleo, Inc., et al. Case No. C-05-*
6 **3773-MJJ.**

7 I understand the terms of the Protective Order. I agree to be bound by such terms and to
8 submit to the personal jurisdiction of the Northern District of California with respect to any
9 proceeding related to the enforcement of this Protective Order, including any proceedings related
10 to contempt of Court. I will not disclose Designated Materials marked "CONFIDENTIAL" or
11 "ATTORNEYS AND CONSULTANTS ONLY" to anyone other than persons specially
12 authorized by the Protective Order, and I agree to return all such materials which come into my
13 possession to counsel from whom I received such materials upon the termination of this action or
14 my employment as a consultant in this action.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Name of Individual: _____

18 Company or Firm: _____

19 Address: _____

20 Telephone No.: _____

21 Relationship to this action and its parties: _____
22 _____
23 _____

24 Dated: _____ Signature: _____

Gordon & Rees LLP
101 West Broadway
Suite 1600
San Diego, CA 92101

EXHIBIT B

CERTIFICATION OF CONSULTANT

I, the undersigned, hereby certify that I have read the Protective Order entered in the Northern District of California in the case entitled ***LiveOps v. Teleo, Inc., et al. Case No. C-05-3773-MJJ*** and that I have executed a Certification Concerning Material Covered by Protective Order.

7 I further certify that I am not employed nor currently engaged by a direct competitor of
8 the Designating Party (which shall include Microsoft) with respect specifically to services and
9 technology that combine telephony and internet protocols, or any person or entity currently a
10 party (as of the time of the execution of this Certification) to this action, nor do I have a current
11 expectation of such engagement, and I will accept no such engagement nor discuss same during
12 the pendency of this action. If at any time after I execute this Consultant Certification and
13 during the pendency of the Action I become engaged in business as a competitor of any person
14 or entity currently a party to this action, I will promptly inform the counsel for the party who
15 retained me in the Action, and I will not thereafter review any Designated Materials marked
16 "ATTORNEYS AND CONSULTANTS ONLY" unless and until the Court in the Action orders
17 otherwise. Should I no longer act as a consultant in this Action, I will return all Designated
18 Materials to the counsel for the party who retained me within five (5) business days from the
19 date upon which my consultancy is terminated.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Name of Individual: _____

23 Company or Firm: _____

24 Address: _____

25 Telephone No.: _____

26 Relationship to this action and its parties: _____

27

28 Dated: _____ Signature _____

PROOF OF SERVICE BY MAIL

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, California 94105-2907.

On January 26, 2006, I served the document described as:

[PROPOSED] STIPULATED PROTECTIVE ORDER

on the interested party in this action by placing true copies thereof enclosed in a sealed envelope addressed as follows:

Richard P. Sybert
Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 26, 2006, at San Francisco, California.

Dolores L. Reyes
Dolores L. Reyes